IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CWP No.: 17245 of 2005
Date of decision: August 04, 2006

M/s Bhim Sain Garg & Co.

---Petitioner

Vs.

The State of Punjab and others

-----Respondents

CORAM:- HON'BLE MR JUSTICE ADARSH KUMAR GOEL
HON'BLE MR JUSTICE RAJESH BINDAL

Present: Mr. V.K. Sandhir, Advocate
for the petitioner.

Ms. Lisa Gill, Advocate
for the respondents.

ORDER:

This writ petition seeks quashing of demand notices dated 2.9.1996 (Annexures P-3 and P-4), appellate order dated 9.1.2001 (Annexure P-6) and revisional order dated 5.9.2005 (Annexure P-7).

The case of the petitioner is that the petitioner is a licencee under the provisions of Punjab Agricultural Produce Markets Act, 1961 and Punjab Rural Development Act, 1987 (for short, “the Act”). The impugned demand notices were received by the petitioner, against which appeal and revision have been dismissed. The petitioner did not have full opportunity before the impugned order was passed and orders of assessment were arbitrary.

In reply filed, wherein the writ petition has been contested, it has been pointed out that the petitioner was given number of opportunities, but the petitioner failed to appear. A notice was also published in newspaper, but still the petitioner did not appear and produce the accounts. Best judgment assessment was accordingly made which was based on transport record showing sale of goods by the petitioner on which market fee and RDF was statutorily payable. Having regard

to the conduct of the petitioner in evading the market fee, statutory penalty was also levied which if calculated comes to less than interest, while under the provisions of the Act, interest @ 18%, which was statutory, has been demanded.

We have heard learned counsel for the parties and perused the record.

We find from Annexure P-1 that the notice was duly given to the petitioner for production of accounts and documents for assessment, indicating quantum of sale value on which market fee was payable. The petitioner failed to respond to the said notice. But after publication in the newspaper, the petitioner simply denied having done business as per notice and though mentioned that he was ready to produce the record, the petitioner never appeared. Accordingly, assessment was made vide Annexures P-3 and P-4 in the year 1996. The petitioner challenged the said assessment for the first time on 8.9.1997 by way of a suit though remedy of statutory appeal was available. This suit was dismissed on 21.10.1999 on the ground of bar of jurisdiction as well as on merits. The petitioner has not filed a copy of the judgment, but the respondents have filed the same. In paras 12 to 14, the finding on merits was clearly recorded against the petitioner by the trial Court. It is mentioned in the writ petition that the petitioner preferred an appeal against the dismissal of suit, but for the adjudication of this petition, it was not important to elaborate. The petitioner, thus, has not disclosed as to what happened to the appeal. The petitioner preferred statutory appeal against the order of assessment on 14.9.2000. The appeal was dismissed with a finding that the petitioner was intentionally evading the payment of market fee due, as also the appeal was filed after 3 years and 10 months. It was also noticed that the petitioner got a stay in appeal in civil Court subject to the condition of deposit, but the petitioner never complied with the said condition nor deposited the amount. Statutory revision petition was also dismissed by the revisional authority after noticing that the petitioner had been given four chances to represent his case before the Assessing Authority, but the petitioner failed to avail the same without any reason.

From the above, it is clear that there was no justification for the petitioner for not appearing before the assessing authority and the assessing authority has made assessment on the basis of record available after giving opportunity to the petitioner. Suit filed by the petitioner has been dismissed. In appeal, vide order Annexure R-2, the petitioner was required to make certain deposit as a condition for grant of stay. The petitioner did not make the deposit and it appears that the appeal was not pursued and instead, the petitioner chose to file a departmental appeal which was belated and without merit.

We have perused the assessment order, appellate order and revisional order. Even on merits, counsel for the petitioner has not been able to show any error therein.

Accordingly, there is no merit in this writ petition and the same is dismissed.

(ADARSH KUMAR GOEL)
JUDGE

August 04, 2006
Ashwani

(RAJESH BINDAL)
JUDGE